

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
March 10, 2003

D039948 People v. Martinez

The order is affirmed. Kremer, P.J.; We Concur: Benke, J., McConnell, J.

D040948 Hoebeck et al. v. Pacific Tire & Wheel, Inc.

Upon written stipulation filed by the parties to the cross-appeal, the cross-appeal filed by Carmen Hoebeck is dismissed and the remittitur is ordered to issue immediately (Cal. Rules of Court, rule 20.) Each party to bear own costs on appeal.

D041739 Ledezma v. Superior Court of San Diego County/People

The petition is denied.

D039749 Horton v. San Diego Unified School District/Bersin

Judgment affirmed. Haller, J.; We Concur: Benke, Acting P.J., O'Rourke, J.

Court convened at 9:00 a.m.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Terry O'Rourke
Clerk: D. E. Moore

D039165 People v. Perez

Cause called on merits. Knut S. Johnson, Esq. argued for appellant. Carl Horst, Deputy Attorney General argued for respondent. Mr. Johnson replied. Cause submitted.

D039481 California Native Plant Society v. City of San Diego

Cause called on merits. Craig A. Sherman, Esq. argued for appellant. Claudia Silva, Deputy City Attorney General argued for respondent. Richard A. Schulman, Esq. argued for real party in interest. M. Sherman replied. Cause submitted.

Court recessed at 9:53 a.m. to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices James McIntyre and Terry O'Rourke

D039059 Iliff v. Dustrud

Cause called on merits. Paul S. Dustrud argued for appellant in pro per. Edward I. Silverman, Esq. argued for respondent/cross-appellant, Iliff. Dan Lawton, Esq. argued for respondent. Mr. Silverman replied. Cause submitted.

Court recessed at 10:30 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Judith McConnell
Clerk: D. E. Moore

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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March 10, 2003 (Continued)

D040234 Ubolratana v. Jensen

Matter called on merits. Allen Irwin Neiman, Esq. argued for appellant. Robert Johnston Parks, Esq. argued for respondent. Mr. Neiman replied. Matter submitted.

Court recessed at 2:08 p.m. to change panel members. New panel members: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Patricia Benke and Judith McConnell

D039708 Caserta v. State Farm Fire and Casualty Company

Cause called on merits. John Tinley Brooks, Esq. argued for respondent/cross-appellant. Fred U. Hammett, Esq. argued for appellant/cross-respondent. Cause submitted.

Court recessed at 2:55 p.m. until Tuesday, March 11, 2003 at 9 a.m.

D041479 In re Bowman on Habeas Corpus

The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
March 11, 2003

D041595 Cano v. Superior Court of San Diego County/Holdings et al.

The petition is denied.

D039510 Peralta et al. v. Hilton Hotels Corporation et al.

The judgment of dismissal is affirmed. Respondent is awarded its costs on appeal. Huffman, Acting P.J.; We Concur: McDonald, J., McIntyre, J.

D037989 Wolfkind v. San Diego Regional Center et al.

The judgment is affirmed. The Center and Werwage are awarded costs on appeal. McConnell, J.; We Concur: Huffman, Acting P.J., McDonald, J.

D040078 People v. Fox

The judgment is affirmed but for credit for time served. The award of credit is reversed and the matter is remanded for redetermination of credit for time served. Huffman, J.; We Concur: Kremer, P.J., O'Rourke, J.

D040399 People v. Henry

Judgment affirmed. Benke, Acting P.J.; We Concur: Huffman, J., McDonald, J.

Court convened at 9:00 a.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and Judith McConnell

Clerk: D.E. Moore

D039146 People v. Jones

Cause called on merits. George L. Schraer, Esq. argued for appellant. Marvin Mizell, Deputy Attorney General argued for respondent. Mr. Schraer replied. Cause submitted.

D040030 Cardenas v. 24 Hour Fitness, Inc.

Cause called on merits. Ken Patrick LaFayette, Esq. argued for appellant. Kristie Kawakami, Esq. argued for respondent. Mr. LaFayette replied. Cause submitted.

D039238 California Chiropractic Association v. American Specialty Health Plans, Inc., et al.

Cause called on merits. Elizabeth Mann, Esq. argued for appellant. William Dato, Esq. argued for respondent. Ms. Mann replied. Cause submitted.

Court recessed at 10:34 a.m. to change panel members. New panel members: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Judith Haller and Judith McConnell

D037735 People v. Crayton

Cause called on merits. Wilson Adam Schooley, Esq. argued for appellant. Doug Danzig, Deputy Attorney General argued for respondent. Mr. Schooley replied. Cause submitted.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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DIVISION ONE
March 11, 2003 (Continued)

Court recessed at 11:01 a.m. to change panel members. New panel members: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Judith Haller and Terry O'Rourke

D038843 Johnson v. Lones

Cause called on merits. Richard A. Higgins, Esq. argued for appellant. Scott Patterson, Esq. argued for respondent. Mr. Higgins replied. Cause submitted.

Court recessed at 11:34 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and Alex McDonald

D036550 People v. Fulton

Cause called on merits. Howard C. Cohen, Esq. argued for amicus appellant. John Edward Edwards, Esq. argued for appellant. Gary Brozio, Deputy Attorney General argued for respondent. Mr. Cohen replied. Mr. Edwards replied. Cause submitted.

Court recessed at 2:11 p.m. to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Alex McDonald

D039236 People v. Allman

Cause called on merits. Gregory L. Rickard, Esq. argued for appellant. Lynne McGinnis, Deputy Attorney General argued for respondent. Mr. Rickard replied. Cause submitted.

D039509 Maheshwari v. Sharp Memorial Hospital

Cause called on merits. Philip L. Merkel, Esq. argued for appellant. Richard D. Barton, Esq. argued for respondent. Mr. Merkel replied. Cause submitted.

D038480) DePew et al. v. Depew etc.

D039156) DePew et al. v. DePew etc.

Cause called on merits. Joseph M. Lisi, Esq. argued for appellant. Boris Siegel, Esq. argued for respondent. Mr. Lisi replied. Cause submitted.

Court recessed at 3:26 p.m. to change panel members. New panel members: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and Judith McConnell

D040057 Simmons v. City of San Diego et al.

Cause called on merits. Stanley F. Zubel, Esq. argued for appellant. Charles A. Bird, Esq. argued for respondent. Mr. Zubel replied. Cause submitted.

Court recessed at 4:16 p.m. until Wednesday, March 12, 2003 at 9 a.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
March 11, 2003 (Continued)

D040568 People v. Fields

The judgment is affirmed. Kremer, P.J.; We Concur: Huffman, J., O'Rourke, J.

D040551 People v. Stanley

The judgment is affirmed. Kremer, P.J.; We Concur: Huffman, J., O'Rourke, J.

D039936 People v. Pollard

The judgment is affirmed. Kremer, P.J.; We Concur: Benke, J., O'Rourke, J.

D039602 Board of Trustees of the San Diego Electrical Health and Welfare Trust v. Doyle

The judgment is affirmed. O'Rourke, J.; We Concur: Benke, Acting P.J., Haller, J.

D040231 People v. Graham

The judgment is affirmed. Huffman, J.; We Concur: Kremer, P.J., O'Rourke, J.

D040581 People v. Copley

The judgment is affirmed. O'Rourke, J.; We Concur: Kremer, P.J., Huffman, J.

D039912 People v. Garcia

The judgment is affirmed. O'Rourke, J.; We Concur: Kremer, P.J., Huffman, J.

D040892 In re Christina Z. et al., Juveniles

The orders are affirmed. O'Rourke, J.; We Concur: Haller, Acting P.J., McDonald, J.

D040858 In re Cheyenne A., a Juvenile

The judgment is affirmed. Kremer, P.J.; We Concur: Benke, J., McDonald, J.

D039671 People v. Camacho

Judgment affirmed. Benke, J.; We Concur: Kremer, P.J., Huffman, J.

D038726 Penaflor v. City of San Diego et al.

The order granting a new trial is reversed. The court is directed to vacate the order granting a new trial in this matter, enter a new order denying Penaflor's new trial motion, and reinstate the judgment. Nares, Acting P.J.; We Concur: McDonald, J., McIntyre, J.

D041356 In re Tobacco Cases II

Defendant's protective cross-appeal is dismissed on the grounds defendants lack standing to appeal the judgment in their favor and the class certification order is a nonappealable order. The dismissal of the cross-appeal does not preclude defendants from seeking review of the class certification order on appeal from any final judgment that may be entered in plaintiffs' favor after the disposition of plaintiffs' appeal from the existing judgment.

D041647 Murphey et al. v. Superior Court of San Diego County/Wang's International, Inc., et al.

The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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March 11, 2003 (Continued)

D040527 Provo v. Qualcomm, Inc.

Appellant has failed to file a brief after notice given pursuant to California Rules of Court, rule 17(a).
The appeal is dismissed.

D041758 Nathan v. Superior Court of San Diego County/People

The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
March 12, 2003

D038811 Tuchscher Development Enterprises, Inc. v. San Diego Unified Port District et al.

The judgment is affirmed. CERTIFIED FOR PUBLICATION. O'Rourke, J.;
We Concur: Benke, Acting P.J., Huffman, J.

D040859 In re Joshua A., a Juvenile

The August 1, 2002 order returning the custody of the children to the mother is reversed and the matter is remanded for the court to reconsider the issue of returning the children to parental custody in light of the outcome of the remand proceedings we directed in Robert's previous appeal. (In re Joshua G., supra, D040132.) The court has discretion to continue the children in their current placement or make any other placement order in the children's best interests pending its resolution of the issues we have directed it to decide on remand. Huffman, Acting P.J.; We Concur: Nares, J., O'Rourke, J.

D041751 In re Harbour on Habeas Corpus

The petition is denied.

D038104 People v. Gross

Appellant's conviction for petty theft with a prior theft conviction is stricken. All other convictions are affirmed. The finding that his Connecticut prior conviction qualifies as a strike or a prior conviction under section 667, subdivision(a)(1), is reversed. Benke, J.; We Concur: Kremer, P.J., Haller, J.

D040203 People v. George

The judgment is affirmed. Huffman, Acting P.J.; We Concur: McDonald, J., McConnell, J.

D040814 People v. Williams

The judgment is affirmed. Kremer, P.J.; We Concur: Huffman, J., O'Rourke, J.

D040693 Adoption of Devin M., a Minor

The order is affirmed. McDonald, J.; We Concur: Kremer, P.J., Haller, J.

D039490 Cornellison v. Julian Union High School District et al.

The judgment is affirmed. Defendants are entitled to their costs on appeal. McIntyre, J.;
We Concur: Nares, Acting P.J., McConnell, J.

D040455 In re Marion K., a Juvenile

Judgment affirmed. McIntyre, J.; We Concur: Benke, Acting P.J., O'Rourke, J.

D041635 In re Harbour on Habeas Corpus

The petition is denied.

D040313 In re Larissa R., a Juvenile

The order denying the section 388 motion heard on June 14, 2002, is reversed and remanded. The superior court is granted limited jurisdiction to rehear the section 388 motion in which it goes behind the earlier finding of molest and rules anew on whether to set aside the original jurisdiction finding under section 300, subdivision (d). In accord with the parties' stipulation, the remittitur is to issue immediately as to this court. Haller, J.; We Concur: Nares, J., McIntyre, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
March 12, 2003 (Continued)

D040505 People v. Ojala

Judgment affirmed. Nares, Acting P.J.; We Concur: Haller, J., McConnell, J.

D041246 Bloom v. Metabolife International, Inc.

Appellant has failed to file a brief after notice given pursuant to California Rules of Court, rule 17(a). The appeal is dismissed.

D038657 Maxwell/Grant Financial Group, Inc., et al. v. Brown Leifer Slatkin + Berns
D039353 Maxwell/Grant Financial Group, Inc., et al. v. Brown Leifer Slatkin + Berns

The judgment is affirmed. Brown Leifer is entitled to its costs on appeal. McIntyre, J.; We Concur: Huffman, Acting P.J., McDonald, J.

D038967 University Mechanical and Engineering Contractors, Inc., et al. v. Pinkerton's Inc.

The judgment is affirmed. Pinkerton's to recover costs on appeal. McIntyre, J.; We Concur: Nares, Acting P.J., McDonald, J.

D039388 People v. Abdulle

The judgment is affirmed. McDonald, J.; We Concur: Huffman, Acting P.J., O'Rourke, J.

D039467 Bradley v. Lawhead

The court is ordered to modify the Order After Hearing on Petition for Injunction Prohibiting Harassment filed on February 16, 2001, to include the following statement at paragraph 6(b)(6) of the order: "The 10-foot stay-away order does not apply when Lawhead is located on his own property ([trial court to insert property address]), unless Bradley is repairing, or otherwise working on, the fence that divides the property." In all other respects the order is affirmed. Lawhead to bear Bradley's costs on appeal. Haller, J.; We Concur: Kremer, P.J., Benke, J.

Court convened at 9:00 a.m.

Present: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Patricia Benke and Judith Haller
Clerk: D. E. Moore

D039279 People v. Gilmore

Cause called on merits. Patricia J. Ulibarri, Esq. argued for appellant via telephone. Lilia Garcia, Deputy Attorney General argued for respondent. Ms. Ulibarri replied. Cause submitted.

Court recessed at 9:23 a.m. to change panels. New panel members: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Judith Haller and Alex McDonald

D039485 People v. R. J. Reynolds Tobacco Company

Cause called on merits. Henry Joseph Escher, Esq. argued for appellant. Amy J. Hertz, Deputy Attorney General argued for respondent. Mr. Escher replied. Cause submitted.

Court recessed at 10:07 a.m. to change panel members. New panel members: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Judith Haller and Judith McConnell

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
March 12, 2003 (Continued)

D039446 Mageno v. Sawyer

Cause called on merits. Sue Sawyer, argued for appellant in pro per. No appearance by respondent. Cause submitted.

Court recessed at 10:32 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Alex McDonald, Acting Presiding Justice, and The Honorable Associate Justices James McIntyre and Terry O'Rourke
Clerk: D. E. Moore

D039931 Tan v. Tan

Cause called on merits. Nicholas Spencer King, Esq. argued for appellant. Richard R. Ravreby, Esq. argued for respondent. Mr. King replied. Cause submitted.

Court recessed at 1:57 p.m. to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and Terry O'Rourke

D040569 Scripps Clinic v. Superior Court

Matter called on merits. Gino Patrizio, Esq. argued for petitioner. Storm Anderson, Esq. was present in oral argument for petitioner, but did not argue. Craig Clark, Esq. argued for respondent. Mr. Patrizio replied. Matter submitted.

Court recessed at 3 p.m. until Thursday, March 13, 2003 at 9 a.m.

D040991 Tippet et al. v. Stocking

Upon written stipulation filed by the parties, the appeal is dismissed.

D040692 Yellow Cab of San Diego, Inc., et al. v. San Diego Metropolitan Transit Development Board

Upon written stipulation filed by the parties, the appeal is dismissed.

D040711 M & S Balanced Property Fund, L.P. v. City of San Diego et al.

The appeal is dismissed pursuant to California Rules of Court, rule 17(a).

D039023 Burtech Pipeline, Inc., v. Dudek & Associates, Inc., et al.

The request for publication of the opinion is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
March 13, 2003

D041471 In re Kevin S., a Juvenile

The appeal is dismissed. McConnell, J.; We Concur: Nares, Acting P.J., McIntyre, J.

D041427 In re Johnson on Habeas Corpus

The petition is denied.

D039050 People v. Banuelos

The judgment is affirmed. CERTIFIED FOR PUBLICATION. Huffman, Acting P.J.;
We Concur: Nares, J., O'Rourke, J.

D037855 People v. Frazer

It is ordered that the opinion filed herein on February 6, 2003, and certified for partial publication on March 7, 2003, is modified. No change in judgment.

Court convened at 9:00 a.m.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and James McIntyre
Clerk: D. E. Moore

D039371 WHGF Real Estate Limited Partnership v. First San Diego Properties

Cause called on merits. Sherry M. DuPont, Esq. argued for appellant. Gary J. Stephenson, Esq. argued for respondent. Anthony Joseph Romano, Esq. was present in oral argument, but did not argue. Ms. DuPont replied. Cause submitted.

D037637 Duarte et al. v. WHGF Real Estate Limited Partnership

Cause called on merits. Gary J. Stephenson, Esq. argued for appellant. Jess R. Bressi, Esq. was present in oral argument for respondent, but did not argue. Cause submitted.

D039484 Leap Wireless International, Inc., et al. v. Endesa

Cause called on merits. Frank E. Rogozienski, Esq. argued for appellant. Steven C. Bennett, Esq. argued for respondent. Mr. Rogozienski replied. Cause submitted.

Court recessed at 10:15 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Patricia Benke and Gilbert Nares
Clerk: D. E. Moore

D037293 Fish v. Nanotronics Corporation et al.

Cause called on merits. John Morris, Esq. argued for appellant. Mark M. Gloven, Esq. argued for respondent. Mr. Morris replied. Cause submitted.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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DIVISION ONE
March 13, 2003 (Continued)

Court recessed at 2:03 p.m. to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Cynthia Aaron

D039720 People v. Dunford

Cause called on merits. Matthew Braner, Deputy Public Defender argued for appellant. Peter Quon, Deputy Attorney General argued for respondent. Mr. Braner replied. Cause submitted.

D039663 Jacobs v. Grossmont Hospital

Cause on merits. Dan Bacal, Esq. argued for appellant. James Jason Hill, Esq. argued for respondent. Mr. Bacal replied. Simultaneous letter briefs are due to be filed with the court on March 27, 2003. Cause submitted.

Court adjourned at 3:03 p.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
March 14, 2003

D040225 Epstein v. Rodriguez

The order is modified to reduce the sanctions award by \$530. In all other respects the order is affirmed.
Haller, J.; We Concur: Kremer, P.J., McConnell, J.

D038915 People v. Beitz

The judgment is affirmed. Benke, J.; We Concur: Kremer, P.J., Haller, J.

D038433 People v. Jackson

The judgment is affirmed. Huffman, Acting P.J.; We Concur: Haller, J., McIntyre, J.

D040869 People v. Sherman

D040870 People v. Sherman

Appellant's unopposed request for consolidation of D040869 and D040870 is granted. All future filings are to be under D040869.

D041478 In re Cochran on Habeas Corpus

The petition is denied.